

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

APPLETON PAPERS INC. and
NCR CORPORATION,

Plaintiffs,

v.

No. 2:08-cv-00016-WCG

GEORGE A. WHITING PAPER COMPANY,
P.H. GLATFELTER COMPANY, MENASHA
CORPORATION, GREEN BAY PACKAGING
INC., INTERNATIONAL PAPER COMPANY,
LEICHT TRANSFER & STORAGE COMPANY,
NEENAH FOUNDRY COMPANY, NEWPAGE
WISCONSIN SYSTEM INC., THE PROCTER
& GAMBLE PAPER PRODUCTS, and
WISCONSIN PUBLIC SERVICE CORP.

Defendants.

**DEFENDANT P.H. GLATFELTER COMPANY’S MOTION TO DISMISS IN PART
PLAINTIFFS’ THIRD AMENDED COMPLAINT**

Defendant P.H. Glatfelter Company (“Glatfelter”), by its undersigned counsel, respectfully moves this Court to dismiss in part Plaintiffs Appleton Papers Inc.’s and NCR Corporation’s Third Amended Complaint, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. Glatfelter seeks the same relief that it sought in its Motion to Dismiss in Part Plaintiffs’ Second Amended Complaint (Dkt. No. 58) -- that is, to dismiss (i) all portions of Counts I and II of the Third Amended Complaint seeking to recover from Glatfelter “OU1 Response Activities and Costs” as defined in the consent decree entered in *United States v. P.H. Glatfelter Co.*, No. 2:03-cv-949-LA, (ii) all portions of Count I of the Third Amended Complaint seeking to recover natural resource damages, and (iii) Count III of the Third Amended

Complaint in its entirety -- for the same reasons set forth in that motion and the accompanying Memorandum in Support (Dkt. No. 58). Therefore, Glatfelter incorporates herein by reference its Motion to Dismiss in Part Plaintiffs' Second Amended Complaint, its Memorandum in Support of that motion, and its proposed Order (Dkt. No. 58).

Glatfelter files this present motion to dismiss out of an abundance of caution, although plaintiffs acknowledge that the Third Amended Complaint adds seven additional defendants but does not alter the allegations against Glatfelter. (Plaintiffs' Consolidated Response to Defendants P.H. Glatfelter Company's and Menasha Corporations' Motions to Dismiss, Dkt. No. 92 at 2 n.1). Therefore, plaintiffs' filing of the Third Amended Complaint does not affect the arguments made in Glatfelter's Motion to Dismiss in Part Plaintiffs' Second Amended Complaint and should not affect the Court's resolution of the motion to dismiss.

Plaintiffs have already responded to Glatfelter's prior motion to dismiss, and therefore Glatfelter does not anticipate that plaintiffs need respond to this present motion to dismiss.

Respectfully submitted,

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Dated: April 28, 2008

CERTIFICATE OF SERVICE

I hereby certify that, on this 28th day of April, 2008, a true and correct copy of the foregoing Defendant P.H. Glatfelter Company's Motion to Dismiss in Part Plaintiffs' Third Amended Complaint was filed electronically via the Electronic Court Filing system and is available for viewing and downloading by the following:

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In addition, a copy will be sent by U.S. Mail to the following:

Wisconsin Public Service Corporation 700 N. Adams St. Green Bay, WI 54301	Leicht Transfer & Storage Company 1401 State Street Green Bay, WI 54304
Newpage Wisconsin System, Inc. 231 First Avenue N Wisconsin Rapids, WI 54495	International Paper Company 8040 Excelsior Drive Madison, WI 53717
Proctor & Gamble Paper Products Company 8040 Excelsior Drive Madison, WI 53717	Neenah Foundry Company 411 E. Wisconsin Ave Milwaukee, WI 53202

s/ Ronald M. Varnum
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